

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  IOWA TELECOMMUNICATIONS SERVICES, INC., d/b/a IOWA TELECOM	DOCKET NO. TF-03-130
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**PROCEDURAL ORDER AND NOTICE OF HEARING**

(Issued June 25, 2003)

A prehearing conference in this proceeding was held on June 23, 2003. The purposes of the prehearing conference were to determine whether a hearing was necessary and to agree on a procedural schedule. Counsel for all parties were present. After discussion, the parties agreed it was unlikely they would be able to stipulate to the facts in the case, and that prefiled evidence and a hearing would be necessary. Therefore, the parties agreed to a procedural schedule and hearing date as set forth in this order. If it becomes possible to stipulate to some of the facts in the case, the parties are encouraged to do so.

**THE BOARD'S JURISDICTION AND THE ISSUE IN THE CASE**

The Board has jurisdiction over the proposed Win Back Program tariff filed by Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom (Iowa Telecom) on April 29, 2003, and the parties in the case, pursuant to Iowa Code Chapter 476, the rules of the Board, and jurisdiction delegated to the states pursuant to certain sections of the federal Telecommunications Act and Federal Communications

Commission rules promulgated pursuant to the Act. The primary issue in this case is whether Iowa Telecom's proposed Win Back Program tariff complies with the statutes and rules administered by the Board. In their pleadings, the parties have identified a number of specific issues. However, all of the specific issues identified relate to this primary issue.

If the parties believe there are other primary issues in this case, or other specific issues not previously identified in the pleadings filed to date, they should file an identification of those issues as soon as possible.

### **QUESTIONS FOR THE PARTIES**

The parties are directed to answer the following questions in their prefiled testimony. All answers to questions must be given in the form of testimony by an identified witness or exhibits sponsored by an identified witness. If a portion of an answer requires legal argument, that portion of the answer should be identified and presented in a brief. Although many of the questions are directed to a particular party, any party may provide an answer to any question. The parties should not view the questions as a limitation on necessary evidence and should file whatever evidence they deem necessary to support their respective positions.

The following question is directed to all parties other than the Consumer Advocate Division of the Department of Justice (Consumer Advocate).

1. Please provide evidence to support all statements made in your pleadings filed to date.

The following instructions are directed to all parties.

1. When referring to another company's tariff, please identify the company, filing date, docket number (if known), and tariff pages. If the tariff is not the current tariff on file with the Utilities Board (Board), please file a copy as an exhibit. Please discuss the similarities and differences between the proposed Iowa Telecom tariff and the cited tariff, and the legal significance of the similarities and differences, if any.

2. If you refer to a statute, rule, section of Iowa Telecom's price plan, or economic or legal theory, please explain specifically how the item referred to relates to the proposed tariff at issue in this case and the relationship between Iowa Telecom and the other parties (or persons represented by parties) to this case.

Iowa Telecom is directed to answer the following questions.

1. Given that the proposed tariff expands the program to include new customers as well as returning customers, is the name "Win Back Program" still appropriate and clear? Please explain your answer.

2. Paragraphs 1(a) and 2(a) of the proposed tariff state that the program is available to customers in "exchanges where local exchange competition is present." Please explain what is meant by "exchanges where local exchange competition is present."

3. Paragraph 2(b) of the proposed tariff states that customers will receive waivers only upon their initial establishment of service with Iowa

Telecom or on their return to Iowa Telecom from a competitor. Can an individual customer receive a waiver only once? Or many times? Or only once within a certain period of time? For example, if a customer switched to Iowa Telecom, received a waiver, switched to a competitor, and then returned to Iowa Telecom, could the customer receive another waiver? If there are limits on the number of times or the frequency with which the customer may receive a waiver, please explain why that is not set forth in the proposed tariff, and how the customer would know of the limits.

4. Please explain how Iowa Telecom will provide the waivers to customers. For example, will every new or returning customer automatically be offered or given a waiver? Will the waivers only be offered or given as a marketing tool when necessary to make the sale? How will the waiver(s) be applied on the customer's bill? Will customers given a waiver receive a bill showing zero for the charges? Or will the customer receive a credit? If a credit is provided, when will it be provided?

5. Please explain how a prospective customer will learn of the waiver options.

6. With respect to paragraph 2(d), please explain how Iowa Telecom will determine the number of months a customer may receive a waiver of the recurring rates. Please explain how Iowa Telecom will determine which services will be included in the waiver offer. Please explain which customer calling features are included in the paragraph.

7. Please explain the meaning of paragraph 2(f).

8. Please explain what the term "other service offerings" in paragraph 2(g) means. Please explain when and how Iowa Telecom would implement this paragraph.

9. Please explain why the tariff does not include a requirement that a customer stay with Iowa Telecom for a certain period of time to be eligible for a waiver. Since there is no such requirement in the proposed tariff, please explain why Iowa Telecom believes it will be able to recover the costs of the waiver from the customer.

10. Please provide cost information regarding the tariff with underlying support. Please explain and support all cost statements with evidence and specify the cost theory or theories you are invoking. Please identify and support your assumptions. Please explain how the cost theory or theories you are invoking show the proposed tariff complies with the statutes and rules administered by the Board.

11. With the original Win Back tariff filing, in its confidential filing, Iowa Telecom explained exactly which services could be waived pursuant to the tariff. Please provide this information for the proposed tariff. If Iowa Telecom wishes to provide the information in a confidential or separate filing, please explain why it does not put the information in the tariff itself to clarify the tariff.

12. The proposed tariff appears to have no set duration. Paragraph 2(i) limits the waivers available to resellers to customers returning to the reseller from Iowa Telecom. Paragraph 2(i) does not appear to be comparable to the waivers offered by Iowa Telecom to its own prospective customers pursuant to paragraphs 1(a) through 2(g), in that waivers are not available to new customers of the reseller in addition to those customers returning to the reseller from Iowa Telecom. Please explain whether and why Iowa Telecom believes the proposed tariff therefore complies with the Telecommunications Act and applicable federal rules, including, but not necessarily limited to, 47 U.S.C. §§ 251(b)(1) and (c)(4), and 47 C.F.R. §§ 51.605 and 51.613.

13. In paragraph 17 of its May 23, 2003, response, Iowa Telecom refers to a Qwest tariff. Is the Qwest tariff referred to Qwest's Iowa Tariff No. 1, Section 5, original pages 53–55, and 1<sup>st</sup> revised page 56? If yes, please discuss the similarities and differences between the proposed Iowa Telecom tariff and the Qwest tariff, and the legal significance of the similarities and differences, if any. If no, please provide a copy of the relevant tariff as an exhibit, and discuss the similarities and differences between the tariffs and the legal significance of the similarities and differences, if any.

14. In paragraph 18 of Iowa Telecom's May 23, 2003, response, it appears that the customer referred to in the fourth, fifth, and sixth sentences is a current Iowa Telecom customer switching to a competitor. It does not appear that such a customer would be eligible for the proposed tariff, or that

the conclusions in the paragraph follow from these sentences. Please provide additional explanation to support the conclusions in the third, seventh, and eighth sentences in the paragraph.

South Slope Cooperative Telephone Company Inc. (South Slope) is directed to answer the following questions.

1. Paragraph two of South Slope's May 27, 2003, reply refers to a "long standing interpretation of statute" with respect to the legal status of the original Iowa Telecom Win Back tariff and the Qwest tariff. Iowa Telecom argues that its original Win Back tariff was deemed approved pursuant to Iowa Code § 476.6(7) (2003), since the Board did not docket it as a formal proceeding and set it for hearing. Please explain what is meant by a "long standing interpretation of statute." Please provide evidence of the "long standing interpretation of statute" referred to, including evidence showing whether the Board has ever formally interpreted the statute. Please state and discuss your position regarding the meaning of § 476.6(7) and the legal status of tariffs accepted for filing and not docketed as a formal proceeding and set for hearing. Please explain how the legal status of Iowa Telecom's prior Win Back Program tariff or other companies' tariffs is relevant to whether Iowa Telecom's proposed tariffs should be approved.

2. Please explain in detail why South Slope believes the proposed tariff would violate Iowa Code § 476.5, exactly how it would violate the statute, and provide supportive evidence. If South Slope believes such a violation

would be harmful to South Slope or its customers, please explain how and why in detail.

3. Please explain in detail why South Slope believes the proposed tariff would violate Iowa Code § 476.100(6), exactly how it would violate the statute, and provide supportive evidence. If South Slope believes such a violation would be harmful to South Slope or its customers, please explain how and why in detail.

4. Please explain why the phrase "where local exchange competition is present" is less precise than "where effective competition is determined to exist," and the meaning of each phrase. If South Slope believes the Board should order Iowa Telecom to use the term "where effective competition is determined to exist," please explain why, how it would be determined that effective competition existed in the context of this proposed tariff, and under what authority the Board could issue such an order.

5. If South Slope's position is that expansion of the program to include new customers as well as returning customers violates a Board statute or rule, a federal statute or rule, or some other provision of law over which the Board has jurisdiction, please explain your position in detail and provide supportive evidence. If South Slope believes such a violation would be harmful to South Slope or its customers, please explain how and why in detail.

6. If South Slope's position is that the proposed program constitutes predatory pricing, please explain your position in detail, explain



exactly how the program would be harmful to South Slope or its customers, and provide supportive evidence. Please consider and discuss the effect of proposed tariff paragraph 2(i) on your position. Please explain how the Board has jurisdiction over an allegation of predatory pricing and how an allegation of predatory pricing relates to the statutes, rules, or other provision of law administered by the Board.

7. It appears at this point that the interests and positions of South Slope and the Iowa Association of Municipal Utilities (IAMU) are substantially the same. If the interests of the two parties are not substantially the same, please explain why they are not. If Iowa Code Chapter 384 does not apply to IAMU in this case, and the interests of these two parties are substantially the same, please explain why the undersigned should not order the two parties to consolidate their efforts pursuant to 199 IAC 7.2(8) to avoid a duplication of effort, and to avoid unduly repetitious evidence pursuant to Iowa Code § 17A.14(1).

IAMU is directed to answer the following questions.

1. If IAMU alleges that Iowa Code Chapter 384 applies to it in any respect in this case, please list which provisions of that chapter apply and explain how they apply in detail.

2. It appears at this point that the interests and positions of South Slope and IAMU are substantially the same. If the interests of the two parties are not substantially the same, please explain why they are not. If Iowa Code

Chapter 384 does not apply to IAMU in this case, and the interests of these two parties are substantially the same, please explain why the undersigned should not order the two parties to consolidate their efforts pursuant to 199 IAC 7.2(8) to avoid a duplication of effort, and to avoid unduly repetitious evidence pursuant to Iowa Code § 17A.14(1).

3. Please explain which members of IAMU are affected by the proposed tariff at issue in this case, and how they are affected.

4. Please state and discuss your position regarding the meaning of § 476.6(7) and the legal status of tariffs accepted for filing and not docketed as a formal proceeding and set for hearing. Please explain how the legal status of Iowa Telecom's prior Win Back Program tariff or other companies' tariffs is relevant to whether Iowa Telecom's proposed tariff should be approved.

5. Please answer questions two, three, four, five, and six directed to South Slope, except substitute "IAMU" for "South Slope," and "IAMU, its members, or its members' customers" for "South Slope or its customers."

**IT IS THEREFORE ORDERED:**

The following procedural schedule is established.

a. On or before Wednesday, July 2, 2003, Iowa Telecom must provide its cost study to the other parties.

b. On or before Wednesday, July 9, 2003, Iowa Telecom must file prepared direct testimony and exhibits that include, but are not limited to, the

answers to the questions contained in this order. When numbering exhibits, Iowa Telecom should use numbers one and following.

c. On or before Wednesday, July 30, 2003, South Slope, IAMU, and the Consumer Advocate must file prepared direct testimony and exhibits that include, but are not limited to, the answers to the questions contained in this order. When numbering exhibits, South Slope should use numbers 100 and following, IAMU should use numbers 200 and following, and Consumer Advocate should use numbers 400 and following.

d. On or before Wednesday, August 13, 2003, Iowa Telecom must file rebuttal testimony and exhibits.

e. A public hearing for the presentation of evidence and the cross-examination of witnesses will be held on Wednesday, August 27, and Thursday, August 28, 2003, in the Board hearing room, 350 Maple Street, Des Moines, Iowa, beginning at 9:30 a.m. If a party's exhibits are extensive, the party should provide an index listing the exhibits to the undersigned, opposing counsel, and the court reporter, and must file a copy with the Board Records and Information Center. Each party must provide a copy of its prefiled testimony to the court reporter. Persons with disabilities requiring assistive services or devices to observe or participate in the hearing should contact the Board at (515) 281-5256 in advance of the scheduled hearing date to request that appropriate arrangements be made.

f. A briefing schedule will be established at the conclusion of the hearing.

g. In the absence of objection, all data requests and responses referred to in oral testimony or on cross-examination will become a part of the evidentiary record of these proceedings. Pursuant to 199 IAC 7.2(6), the party making reference to the data request must file one original and three copies of the data request and response with the Executive Secretary of the Board at the earliest possible time.

**UTILITIES BOARD**

/s/ Amy L. Christensen  
Amy L. Christensen  
Administrative Law Judge

ATTEST:

/s/ Sharon Mayer  
Executive Secretary, Assistant to

Dated at Des Moines, Iowa, this 25<sup>th</sup> day of June, 2003.